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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-46

NEW ORLEANS STEAMSHIP ASSOCIATION,
Petitioner

v.

GENERAL LONGSHORE WORKERS, I.L.A. LOCAL UNION #1418, an Unincorporated Association, and GENERAL LONGSHORE WORKERS, I.L.A. LOCAL UNION #1419, an Unincorporated Association, AFL-CIO,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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June 30, 1973

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No._____

NEW ORLEANS STEAMSHIP ASSOCIATION,
Petitioner

v.

GENERAL LONGSHORE WORKERS, I.L.A. LOCAL UNION #1418, an Unincorporated Association, and GENERAL LONGSHORE WORKERS, I.L.A. LOCAL UNION #1419, an Unincorporated Association, AFL-CIO,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The petitioner, New Orleans Steamship Association, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on April 4, 1973.

OPINION BELOW

The per curiam opinion of the Court of Appeals, not yet reported, appears in the Appendix hereto. The order of dismissal, with reasons, of the United States District Court, Eastern District of Louisiana, in the form of a

Minute Entry dated October 13, 1972, appears in the Appendix.

The Judgment of the United States District Court, Eastern District of Louisiana, in Civil Action No. 69-2653 to which reference is made in the October 13, 1972 order of dismissal, *supra*, also appears in the Appendix.

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was entered on April 4, 1973. This Petition for Certiorari was filed within ninety days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. Whether the federal policy favoring settlement of labor disputes by arbitration is furthered by a summary refusal of a District Court to render a decision in a case praying for judicial enforcement of an arbitration award.

2. Whether a finding of "mootness" based upon the filing of subsequent litigation between the same parties but upon different factual circumstances is not such a deplorable departure from accepted and usual judicial proceedings as to warrant exercise of this Court's supervisory powers.

STATEMENT OF THE CASE

The New Orleans Steamship Association (hereinafter "NOSA") representing various employers engaged in shipping in the Port of New Orleans, and the two I.L.A. local unions representing the General Longshore Workers in

the Port, Local Unions #1418 and #1419 (hereinafter the "Unions") have engaged in collective bargaining for over thirty-five years. The shipping industry is the largest industry in the City of New Orleans.

One of the contracts resulting from this bargaining relationship had an effective date of October 1, 1964 and an expiration date of September 30, 1968. This contract contained a "no strike—no lockout" clause as well as a comprehensive arbitration commitment by NOSA and the Unions:

ARTICLE XVIII NO STRIKES, NO LOCKOUTS—DISPUTES AND ARBITRATION

(a) NO STRIKES—NO LOCKOUTS
There shall be no strikes, work stoppages, nor shall there be any lockouts.

(b) DISPUTES PROCEDURE AND ARBITRATION
The parties accept the principle that any dispute involving the interpretation or application of the terms of this agreement shall be resolved in an orderly and expeditious manner. They commit themselves to the procedure outlined below.

* * *

(c) Step 1. When a problem arises it shall be discussed immediately . . . .

Step 2. . . . If the matter is not disposed of in this Step 2 . . . either party may take the dispute to final and binding arbitration.

Step. 3. . . . The decision of the arbitrator shall be final and binding on both parties.

* * *

(d) Either party to a dispute may by-pass the procedure leading up to arbitration and obtain arbitration forthwith whenever a violation of section (a) and/or (b) of this Article shall be alleged . . . the arbitrator shall make findings of fact concerning the alleged violation and shall prescribe appropriate relief, including an order to desist therefrom.

Since the expiration of the 1964-68 Agreement, the parties have negotiated and executed two collective bargaining agreements: (1) covering the period October 1, 1968 through September 30, 1971 and (2) one that went into effect on October 1, 1971 and will expire on September 30, 1974. All collective bargaining agreements between NOSA and the Unions, subsequent in time to the 1964-1968 version, have incorporated, *without alteration*, the "no strike—no lockout" clause found therein, as well as the same commitment to arbitration of disputes.[1]

In the latter half of 1965, a series of short work stoppages by members of the Unions occurred. NOSA processed a grievance over these work stoppages to arbitration under the terms of the 1964-68 contract. The issue as defined in the decision of Arbitrator Leonard Oppenheim was:

> Did the Unions engage in work stoppages in violation of the current contract between the Parties?

Arbitrator Oppenheim on December 13, 1965 found the work stoppages or "quickie strikes" to be a violation of the contract and ordered the Unions ". . . to cease and desist from work stoppages . . . ."

[1] The arbitration clause has changed only by a variance in the identity of the members of the arbitration panel.

The Unions did not so cease and desist and on March 16, 1966 NOSA sought a judicial sanction by filing suit in the United States District Court for the Eastern District of Louisiana, praying for enforcement of the December 13, 1965 arbitration award. Jurisdiction was alleged to exist under 29 U.S.C. §185 and 28 U.S.C. §1337. The District Court, with H. W. Christenberry presiding, dismissed the petition for lack of jurisdiction on February 28, 1967. This dismissal was reversed by the Court of Appeals for the Fifth Circuit on January 26, 1968 finding that the District Court had jurisdiction to enforce the award of the arbitrator and remanding the case ". . . for further proceedings not inconsistent herewith." *New Orleans Steamship Association v. General Longshore workers*, et al, 389 F.2d 36 (5th Cir. 1968), *cert. denied* 393 U.S. 828 (1968).

A trial was held by the District Court in December of 1970 following remand from the Fifth Circuit. Briefs were filed and *there the matter rested for twenty-two months.* On October 13, 1972, the District Court filed a Minute Entry *sua sponte* dismissing NOSA's suit as "moot" because a later, different suit between the parties had been filed that allegedly involved the same issues as found in the earlier action. The District Court in its Minute Entry noted that the extraordinary lapse of time following trial had been caused by "inadvertance" chargeable to the Court.

NOSA, following the dismissal by the District Court on October 13, 1972, filed a timely appeal with the Court of Appeals for the Fifth Circuit. That Court refused to grant NOSA the relief requested in a *per curiam* opinion dated April 4, 1973. This petition for an extraordinary writ has followed.

The later suit between the parties, to which the District Court had reference in its dismissal of the instant case, is *New Orleans Steamship Association v. General Longshore Workers, I.L.A., Local Union #1418, et al*, 306 F.Supp. 134 (E.D. La. 1969), *rev'd* 423 F.2d 38 (5th Cir. 1970). That dispute is commonly known as the "LASH case," involving as it did a refusal by the Unions in October of 1969 to work on a vessel that utilized an innovative technique of handling and transporting cargo, i.e., Lighter Aboard Ship, or "LASH". This boycott was appealed to arbitration by NOSA in November 1969. The Unions protested that work on LASH vessels was not covered by the collective bargaining agreement (1968-1971) then in effect. This matter was coincidentally also heard by Arbitrator Leonard Oppenheim and an award was entered on November 5, 1969 directing that the Unions ". . . cease and desist from refusing to work aboard or in connection with the Motor Vessel Acadia Forest . . . ." As they had in the "quickie strikes" case in 1965-1966, the Unions again refused to abide by the arbitrator's decision and accordingly NOSA was forced to seek a judicial order enforcing the LASH dispute award from the U. S. District Court. That Court, the Honorable James A. Comiskey presiding, refused to enforce the arbitration award finding that LASH work was not covered by the collective bargaining agreement. See 306 F.Supp. 134 (E.D. La. 1969) at 139. This decision was timely appealed and on February 24, 1970, the Court of Appeals for the Fifth Circuit reversed Judge Comiskey stating in part:

> The question before the trial court, and now before us, is whether the issues between the parties were arbitrable or not.
>
> * * *

> The dispute between the parties, as we have stated above, is whether the term 'cargo', as used in the contract, could reasonably be found by an arbitrator to include the barges that were lying along side the Acadia Forest for loading, and whether the term 'longshoreman,' as used in the contract, could be construed by an arbitrator as including men whose duty it was to lift these barges aboard the vessel. These questions are for the arbitrator, not the court, to decide.
>
> The judgment is REVERSED and the case is REMANDED . . . 423 F.2d 38, 39, 41 (1970)

Accordingly, on July 8, 1970 a Judgment of Permanent Injunction was signed by Judge James A. Comiskey enjoining the Unions from disobeying the November 5, 1969 arbitration award or boycotting LASH vessels being worked by employers party to the collective bargaining agreement (Appendix).

REASONS FOR GRANTING THE WRIT

1. THE DECISION BELOW CONFLICTS WITH APPLICABLE DECISIONS OF THIS COURT EXPLICATING FEDERAL POLICY ON THE ROLE OF VOLUNTARY ARBITRATION IN LABOR-MANAGEMENT RELATIONS AND RAISES SIGNIFICANT QUESTIONS REGARDING THE PROPER ROLE OF A REVIEWING COURT IN THE ARBITRAL PROCESS.

This Court committed the Federal judiciary to a national labor policy promoting industrial peace through arbitration of grievances in a trio of landmark decisions issued on June 20, 1960: *United Steelworkers of America v.*

American Manufacturing Co., 363 U.S. 564 (1960); *United Steelworkers of America v. Warrior and Gulf Navigation Co.*, 363 U.S. 574 (1960); and *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960). A decade later this court indicated clearly that it had not wavered in its decision to endorse voluntary arbitration in the decision styled *Boys Market, Inc. v. Retail Clerks Union, Local 770*, 398 U.S. 235 (1970). The major question presented in this case is whether the Court will permit this commitment to be undermined by an apparent practice of judicial inaction or whether it will once more exercise its supervisory powers over the federal courts to insure continued fidelity to that commitment.

The "Steelworkers Triology" defined the respective roles of the private industrial arbitrator and the judiciary, and in *Enterprise*, *supra*, the judicial standard to be used in enforcing arbitration awards already rendered was enunciated:

> The refusal of courts to review the merits of an arbitration award is the proper approach to arbitration under collective bargaining agreements. p. 596

The obligation and the responsibility of a reviewing court to duly enforce arbitration awards was brought home *in this very case* by the Court of Appeals for the Fifth Circuit when they reversed the District Court's initial order of dismissal:

> The question presented now is the power of the District Court to enforce the award of an arbitrator in a setting where the arbitrator, in the exercise of undisputed contractual jurisdiction, has ordered an end to work stoppages. The union has

> **refused to abide by his order and asserts that the court is without jurisdiction to remedy the breach. Practically, this is the ultimate or last step in the arbitration process. p. 371**
>
> * * *
>
> **In this case the parties agreed to the remedy of a desist order by the arbitrator. Such an order was entered and breached. The court in enforcing such order or award, although injunctive in nature, would be doing no more than enforcing the agreement of the parties. .**
>
> Norris-LaGuardia is limited to labor disputes and we consider the instant controversy to be outside the scope of a labor dispute as such . . . .
>
> We think the logic of the arbitration policy compels this result; otherwise one of the parties to a collective bargaining agreement containing arbitration and no strike or work stoppage clauses has a *hollow right* indeed. (Emphasis added) *New Orleans Steamship Association v. General Longshore Workers, I.L.A. Local Union #1418, et al.*, 389 F.2d 369 (5th Cir. 1968), cert. denied 393 U.S. 828 (1968)

Following the foregoing 1968 remand, the District Court duly conducted a full trial on NOSA's petition for enforcement. It then "inadvertently" misplaced the record for almost two years and on October 13, 1972 the District Court, true to its reluctance of some seven years' standing to deal with the issue on its merits, entered an order of dismissal *sua sponte* claiming the controversy had been mooted by subsequent litigation.

While the initial thrust of this Court's decisions in defining the role of the judiciary in litigation arising from

private arbitration was to *restrict* the role of a reviewing court, as illustrated by the "Steelworkers Trilogy" *supra*, the proper balance cannot be struck without also defining the extent of *judicial* authority and responsibility. *Boys Market, supra,* was a contribution to the balance in the latter regard and serves as legal precedent for both the issuance of an injunction below and as a reminder of the obligation of the reviewing court to act:

> . . . the effectiveness of such agreements would be greatly reduced if injunctive relief were withheld. Indeed, the very purpose of arbitration procedures is to provide a mechanism for the expeditious settlement of industrial disputes without resort to strikes, lockouts, or other self-help measures. This basic purpose is obviously largely undercut if there is no immediate, effective remedy for those very tactics that arbitration is designed to obviate. p. 249

In the present case the relationship between labor and management has been on-going, with an uninterrupted sequence of collective bargaining agreements to prove it. The two agreements that have been negotiated by the parties since the arbitration award in question have all reaffirmed the parties' commitment to voluntary arbitration—a commitment that the District Court should not be permitted to render meaningless. This Court and others have recognized the continued viability of an arbitration clause after the expiration of the source collective bargaining agreement. Eg., *Piano Workers v. W. W. Kimball Co.*, 221 F.Supp. 461, (N.D. Ill. 1963), *rev'd* 333 F.2d 761 (7th Cir. 1964) *rev'd per curiam*, 379 U.S. 357 (1964); *John S. Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543 (1964); *Minnesota Joint Board Clothing Workers v. United Garment Mfg. Co.*, 338 F.2d 195 (8th Cir. 1964); see

also *Owens-Illinois Glass Co.*, 43 Lab. Arb. 715 (1964) (H. W. Dworkin). *A fortiori*, where the arbitration commitment continues to exist without lapse, as here, the need to insure compliance with the obligation to arbitrate and, where appropriate, to provide judicial sanctions to enforce arbitration awards duly rendered is of undeniable importance.

In denying the parties a decision on the merits and in effect refusing the prayer for judicial enforcement of an arbitration award, the District Court has both violated the direction and spirit of this Court's developing precedent and created a new, significant problem regarding the judicial role in the industrial arbitral process. Review of that court's action is warranted and necessary.

2. THE COURT BELOW HAS AFFIRMED A DISMISSAL ON GROUNDS OF "MOOTNESS" WHICH DISMISSAL SO FAR DEPARTS FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO REQUIRE EXERCISE OF THIS COURT'S SUPERVISORY POWERS.

The trial court herein, as eventually affirmed by the Court of Appeals, did three things to avoid having to make a decision on NOSA's petition for enforcement of the "quickie strikes" arbitration award: (1) it first dismissed the petition claiming it lacked jurisdiction—but this decision was reversed by the Fifth Circuit in 389 F.2d 369 (1968), *cert. denied* 393 U.S. 828 (1968), (2) it "through inadvertance" overlooked the record of the case following a full trial on the merits in December 1970 for twenty-two months, and (3) it finally dismissed the

case for "mootness" allegedly rising from the filing of another action between the parties.[2]

It is difficult to imagine how the filing of a subsequent petition seeking enforcement of a later, different arbitration award in the "LASH case" could render the instant case "moot." Citation of the "LASH case" for purposes of *res judicata* or collateral estoppel would have been more orthodox and understandable. Yet "mootness" is the sole reason given by the District Court in its order of dismissal dated October 13, 1972 (Appendix), and that "mootness" is allegedly based upon the 1969-70 "LASH case." Except for the fact that both the "LASH case" and the instant case involved violations of a "no strike" clause, the facts and relief sought in the two controversies are not the same.

The arbitration in the instant case was over a series of work stoppages in 1965, NOSA complaining of a growing tendency on the part of the Unions to engage in "quickie strikes" aimed at obtaining satisfaction of Union grievances, circumventing thereby the contractual grievance procedure. The Union in defense raised minor procedural points (i.e. staleness) and also denied that the work stoppages were anything but random occurrences, for which they had no responsibility.

The positions of the parties in the 1969 "LASH case" arbitration differed radically from those in the "quickie

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[2] The trial court did not adopt arguments made by the Unions below to the effect that expiration of the 1964-68 collective bargaining agreement vitated any arbitration award arising thereunder. Such arguments are not supported by decisional law, see *Piano Workers v. W. W. Kimball Co.*, 221 F.Supp. 461 (N.D. Ill.1963) *rev'd* 333 F.2d 761 (7th Cir. 1964), *rev'd, per curiam* 379 U.S. 357 (1964); *John S. Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543 (1964); and *United Steel v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

strike" arbitration four years earlier. Issue in 1969 was joined only on the question of arbitrability. Without much risk of oversimplification, the Unions claimed there that the arbitrator had no jurisdiction or authority to interpret certain terms found in the collective bargaining Unions to work on "LASH" vessels.

In the 1965 arbitration over the "quickie strikes" the Unions did not raise a question of substantive arbitrability —such as they did in the "LASH case". In like fashion in the 1969 "LASH case" arbitration, the Unions did not disavow responsibility for the action that was the subject of complaint—such as they had in the arbitration on "quickie strikes."

The difference in issues described above was continued and supplemented in the first District Court hearings upon each of the two arbitrations. In the hearing on enforcement of the arbitration award on "quickie strikes," the Court found that it was without jurisdiction under the Norris-LaGuardia Act and denied the petition for an injunction, thus adding a new issue to the general denial of responsibility pleaded by the Unions. In the first hearing of the United States District Court on the "LASH case" the Court heeded the Union's argument on substantive arbitrability and found that the arbitration award had been issued on a subject beyond the jurisdiction of the arbitrator. See 306 F.Supp. 134 (E.D. La. 1969).

The Fifth Circuit reversed both of the foregoing District Court decisions.

The question of substantive arbitrability and the scope of judicial review of an arbitrator's decision, as found

in the litigation under the "LASH case" has never been raised in the instant case. Those questions and the answers provided by the litigation reported in 306 F.Supp. 134 (E.D. La. 1964), *rev'd* 423 F.2d 38 (5th Cir. 1970) do not, it is submitted, answer the unresolved questions left below by the District Court's order of dismissal, i.e., whether or not the December 13, 1965 arbitration decision is enforceable by the Court under the rubric of Supreme Court decisions in this area. The questions that remain, including the fidelity of the arbitrator's award to the contract and the evidence, as well as the precedental value of a judicial decision on the issue of "quickie strikes" under the subsisting collective bargaining relationship existing in the Port, are not answered by the 1969-70 litigation in the "LASH dispute."

Note that the Unions by disobeying the arbitration award and forcing NOSA to seek judicial enforcement have by their actions proven that there exist unresolved questions—a continuing controversy—that is not settled by the 1965 decision of Leonard Oppenheim or the decisions in the "LASH case." This continuing controversy, or at least manifestation by "quickie strikes", may have been temporarily and partially abated by the fact that the case was before one judicial tribunal or another for the past seven years, but if the District Court's current order of dismissal is upheld no one can say with certainty when the basic disagreement on the legality of "quickie strikes" will again plague the Port of New Orleans, or be resolved.

The possibility of a resumption of illegal conduct was a key in the refusal of this Court to find "mootness" in *U.S. v. W. T. Grant Co.*, 345 U.S. 629 (1952).

Both sides agree to the abstract proposition that

> voluntary cessation of allegedly illegal conduct does not deprive the tribunal of power to hear and determine the case, i.e., does not make the case moot. . . . A defendant is free to return to his old ways. p. 632

The Court there also noted that "mootness" was not to be lightly implied for:

> . . . to say that the case has become moot means that the defendant is entitled to dismissal as a matter of right. p. 632

In addition to the unresolved controversy between the parties herein consideration must be given to the public interest in having the legality of certain practices (i.e. "quickie strikes") settled before a finding of "mootness" will lie, see *W. T. Grant, supra* at 632. The ultimate public interest in the resolution of this dispute is based in the main in avoiding the disruption to commerce and attendant expense that arise from work stoppages in the largest single industry of a large metropolitan city.

In this regard the public interest is coincident with one of the more obvious interests of the parties herein. The cost to NOSA of abandoning seven years of litigation without ever obtaining a benefit by judicial sanction of an award in its favor will be inequitably piled on top of the costs of beginning a whole new arbitration procedure when the controversy flares anew. Should the Unions contest a new arbitration award, further dilatory tactics in Federal court could again prevent NOSA from ever benefiting from its award.

For a court in these circumstances to avoid the basic judicial responsibility of rendering a decision on the merits

not only keeps alive the continuing controversy between the parties, but ironically it renders impotent the private arbitral process, while at the same time denying to the parties any relief in the public judicial system.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Fifth Circuit; or more appropriately, the writ should be granted on the face of the papers and the lower court judgments reversed forthwith, *Gianfala, et al v. Texas Company*, 350 U.S. 879 (1955).

Respectfully submitted,

MONROE & LEMANN
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By_____
1424 Whitney Building
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June 30, 1973

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of June, 1973 three copies of the Petition for Writ of Certiorari were mailed, postage prepaid to Alvin J. Liska, Esq., 7952 Chef Menteur Highway, New Orleans, Louisiana 70126 and Victor H. Hess, Esq., 1411 Decatur Street, New Orleans, Louisiana.

APPENDIX

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 72-3697
Summary Calendar*

NEW ORLEANS STEAMSHIP ASSOCIATION,
Plaintiff-Appellant,

versus

GENERAL LONGSHORE WORKERS, I.L.A. LOCAL UNION #1418 and GENERAL LONGSHORE WORKERS, I.L.A., LOCAL UNION #1419,
Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana

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(April 4, 1973)

Before THORNBERRY, GOLDBERG and RONEY, Circuit Judges.

PER CURIAM: AFFIRMED. See Local Rule 21.[1]

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*Rule 18, 5 Cir., Isbell Enterprises, Inc. v. Citizens Casualty Company of New York, et al., 5 Cir., 1970, 431 F.2d 409, Part I.

[1]See N.L.R.B. v. Amalgamated Clothing Workers of America, 5 Cir., 1970, 430 F.2d 966.

MINUTE ENTRY
OCTOBER 13, 1972
CHRISTENBERRY, J.

SECTION "A"
No. 16398
CIVIL ACTION

NEW ORLEANS STEAMSHIP ASSOCIATION

VS

GENERAL LONGSHORE WORKERS, I.L.A. LOCAL UNION #1418, an Unincorporated Association, and GENERAL LONGSHORE WORKERS, I.L.A. LOCAL UNION #1419, an Unincorporated Association, AFL-CIO

In this matter the court granted a motion of defendant General Longshore Workers I.L.A. Local Union #1418 and #1419 to dismiss plaintiff New Orleans Steamship Association's motion for a mandatory injunction to enforce an arbitrator's award ordering the Unions and their members to cease and desist from work stoppages in violation of their contract with the Association, which was effective October 1, 1964 and remained in effect until twelve o'clock midnight, September 30, 1968.

Plaintiff appealed and the United States Court of Appeals for the Fifth Circuit reversed on January 26, 1968, and remanded for further proceedings.

Thereafter there was a change in counsel for the plaintiff.

Without discussing motions filed in the interim it is sufficient to say that the matter was ultimately set for trial on December 17, 1970. Trial was had on that date after which counsel were given time to file briefs.

The last brief was filed on January 18, 1971 and the matter should have been under submission at that time. However, this did not occur. Through inadvertence the record went to the Clerk's files instead of the submitted drawer and was overlooked. The delay in disposing of the matter is not chargeable to counsel. It was the court's responsibility.

The contract out of which the issues in this case arose expired on September 30, 1968, but the parties continued to operate under it until a new agreement effective February 25, 1969 and remaining in effect until midnight September 30, 1971 was entered into by the parties.

On November 6, 1969 New Orleans Steamship Association brought suit, No. 69-2653 of the docket of this court, against the Unions, defendants in this case, alleging violation of the 1969-71 contract and seeking an injunction to enforce an arbitration award. The issues involved in that case are the same ones involved in the instant case. With the filing of that suit this suit became moot and should have been dismissed at that time. Accordingly,

IT IS ORDERED that this suit be and it is dismissed.

H.W.C.

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cc:
All counsel of record

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

NEW ORLEANS STEAMSHIP ASSOCIATION,
a Corporation

vs.

GENERAL LONGSHORE WORKERS, I.L.A. LOCAL UNION NO. 1418, an Unincorporated Association, and GENERAL LONGSHORE WORKERS, I.L.A. LOCAL UNION NO. 1419, an Unincorporated Association, AFL-CIO

CIVIL ACTION
NO. 69-2653
SECTION "G"

JUDGMENT OF PERMANENT INJUNCTION

This cause came on to be heard on the verified complaint of plaintiff and the affidavits submitted in support of and in opposition thereto, and the court having heard oral evidence in open court, and considering the opinion and mandate of the United States Court of Appeal for the Fifth Circuit, it appearing to the court that the defendants are committing acts, and are about to commit acts as set forth in plaintiff's complaint, and will continue to do so unless restrained by order of this court, and that immediate and irreparable injury, loss or damage will result to plaintiff and the parties that it represents; and that plaintiff, as

a representative of the waterfront employers in the Port of New Orleans, including Central Gulf Steamship Corporation, time charterer of the M/V ACADIA FOREST, a vessel engaged in foreign shipping commerce, and T. Smith & Son, Inc., its contract stevedore, entered into a valid and existing Deep Sea Agreement with defendant Unions effective February 25, 1969, under the terms of which no work stoppages were permitted and any arbitration of a dispute arising under said contract permitted the arbitrator to issue a cease and desist order final and binding on all parties; and that the arbitrator, Leonard Oppenheim, having found that a work stoppage existed, by the arbitrator's award issued November 5, 1969 ordered defendants to cease and desist violating the "no work stoppage" provisions of the contract and to perform stevedoring work on the M/V ACADIA FOREST under the terms of the Deep Sea Agreement; and it further appearing that defendants have failed to obey the award of said arbitrator made pursuant to said contract, and are violating the terms of said contract, and that their refusal so to perform stevedoring work on said vessel has prevented Central Gulf Steamship Corporation from carrying on its shipping business under the provisions of the Deep Sea Agreement to its considerable immediate and continuing economic detriment, therefore

IT IS ORDERED, ADJUDGED AND DECREED that General Longshore Workers, I.L.A. Local Union No. 1418, AFL-CIO and General Longshore Workers, I.L.A. Local Union No. 1419, AFL-CIO, their officers, agents, representatives, employees, attorneys, and all persons in active concert and participation with them, be and they hereby are permanently enjoined and restrained from in any manner refusing to obey the award of Arbitrator Leonard Oppenheim issued pursuant to the Deep Sea Agreement

between plaintiff and defendants, by refusing to perform on behalf of any employer-party to the Deep Sea Agreement stevedoring work in the M/V ACADIA FOREST or like vessel in accordance with said Deep Sea Agreement, and said persons are hereby affirmatively directed to perform upon request on behalf of any employer-party to the Deep Sea Agreement such stevedoring work in accordance with said award and are permanently enjoined and restrained from in any manner interfering with or stopping the loading, unloading or sailing of said vessel M/V ACADIA FOREST or like vessel, where the said vessel was or is to be loaded or unloaded by an employer-party to the Deep Sea Agreement.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the said defendants, General Longshore Workers, I.L.A. Local Union No. 1418, AFL-CIO and General Longshore Workers, I.L.A. Local Union No. 1419, AFL-CIO pay the costs of these proceedings to be taxed by the clerk of this court, and that execution issue for the same.

Issued at New Orleans, Louisiana, July 8th, 1970.

UNITED STATES DISTRICT JUDGE

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SUPREME COURT, U. S.

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OCT 18 1973
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

NO. 73-46

NEW ORLEANS STEAMSHIP ASSOCIATION,
Petitioner

v.

GENERAL LONGSHORE WORKERS, I.L.A. LOCAL UNION #1418, an Unincorporated Association, and GENERAL LONGSHORE WORKERS, I.L.A. LOCAL UNION #1419, an Unincorporated Association, AFL-CIO,
Respondents

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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New Orleans, Louisiana 70126

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

NO. _____

NEW ORLEANS STEAMSHIP ASSOCIATION,
Petitioner

v.

GENERAL LONGSHORE WORKERS, I.L.A. LOCAL UNION #1418, an Unincorporated Association, and GENERAL LONGSHORE WORKERS, I.L.A. LOCAL UNION #1419, an Unincorporated Association, AFL-CIO,
Respondents

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Respondents, General Longshore Workers I.L.A. Local Union 1418 and General Longshore Workers I.L.A. Local 1419, respectfully pray that the Petition for a Writ of Certiorari to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered into this proceeding on April 4, 1973, be denied.

QUESTIONS PRESENTED

1. Whether intervening collective bargaining agreements between the parties since the issuance of the Arbitrator's decision and award have mooted this matter.

2. Whether this matter is now mooted because it does not involve real and substantial rights of the parties.

ADDITIONAL STATEMENT OF THE CASE

The arbitration award sought to be enforced in this matter was rendered on December 13, 1965. The grievances, the arbitration hearings, and the award grew out of and concerned the 1964-68 contract. This contract terminated on September 30, 1968. Following the expiration of the 1964-68 contract there were two periods when there was no contract in effect. The first period existed briefly on September 30, 1968 and the second period existed from on or about December 23, 1968 through the middle of February, 1969. During these two periods the defendant Unions were on strike for a new contract. In the middle of February, 1969 a new contract was consummated. This contract known as the 1968-71 contract terminated on September 30, 1971. Subsequent to September 30, 1971 for a period of time the Unions were on strike for a new contract, which when finally consummated covered the period October 1, 1971-September 30, 1974. This later contract is the one now in force and effect. The two contracts since 1964-68 have language not found in the 1964-68 contract or language that is different in that contract.

On or about September 3, 1970 the New Orleans Steamship Association, petitioner

herein, filed a complaint in the United States District Court for the Eastern District of Louisiana, New Orleans Division, styled New Orleans Steamship Association versus General Longshore Workers I.L.A. Local Union #1418 and General Longshore Workers I.L.A. Local Union #1419, CA No. 70-2554. The complaint stated that it was a suit based upon violation of and seeking performance of the contract between the plaintiff and the defendants. The 1968-71 contract was alleged. Plaintiffs then alleged that there had been numerous work stoppages in violation of the contract and alleged examples of such alleged work stoppages. The petitioner then requested that a temporary restraining order and later a preliminary and permanent injunction be issued restraining the defendant unions from their failure to take matters to grievance and engaging in work stoppages in lieu thereof. Hearings were held on September 10 and 18, 1970 before the Honorable James A. Comiskey, United States District Judge. At the end of the hearings on September 18, Judge Comiskey denied the request for the temporary restraining order as well as the preliminary and permanent injunction. The court instructed the parties to present the matters alleged in the complaint to an arbitrator (see appendix). Thereafter on October 14, 1971 the court issued its judgment in that case (see appendix).

REASONS FOR DENYING THE WRIT

1. THE DECISION BELOW ACKNOWLEDGES THAT THE ARBITRATION AWARD CEASED AT THE END OF THE COLLECTIVE BARGAINING AGREEMENT WHICH IT COVERED.

Since September 30, 1968 for the defendant

Unions have consistently taken the position that the decision and award of the arbitrator had been mooted with the expiration of the 1964-68 contract. The only vitality that the award had came from the contract between the parties. That contract was the 1964-68 contract. When that contract expired and where as here there was a long interval of time before a new contract was agreed to, the arbitration award expired on September 30, 1968. New life could not be given to the award simply because a new collective bargaining agreement was agreed to, even though the language which was the subject matter of the award was the same. There are many cases that hold that matters which arise between contracts or after the expiration of a contract are not arbitrable because the contract which gave life to arbitration is not in existence. Teamsters Local 612 v. Deaton Truck Line, Inc., CA 5 (1962) 307 F.2d 48, 51 LRRM 2137. Local 998 UAW v. B. & T. Metals Co. CA 6 (1963) 315 F.2d 432, 52 LRRM 2787. Flight Engineers v. Eastern Airlines CA 2 (1966) 359 F.2d 303, 62 LRRM 2374 and Teamsters Local 249 v. Kroger Company CA 3 (1969) 411 F.2d 1191, 71 LRRM 2479.

The defendant Unions were ordered to cease and desist from work stoppages that violated the 1964-68 contract. Even if that award had been judiciously enforced it could not have gone beyond September 30, 1968. The court would have only been enforcing the award to the limits contained within it and within the contract. Inasmuch as the contract expired, the court's mandatory injunction could only have gone as far as the award itself went, and this was until September 30, 1968. There could have been no prospective court remedy beyond that date.

A solid basis for the defendant Unions' argument is to be found in the award that is the subject matter of this case as well as the New Orleans Steamship Association's position as stated in that award. The arbitrator sets out the Association's position when it states, "The Association strongly argues that this Arbitrator should retain jurisdiction throughout the Contract so as to ascertain that his order is obeyed." When the Association took that position before the arbitrator it was fully aware that any award in its favor would live only as long as the contract. They were seeking to have that particular arbitrator police the award for the duration of the 1964-68 contract rather than turn to one of the other arbitrators on the panel. Whatever may have been the motive, the Association's argument shows that it understood that the award would last only through the 1964-68 contract.

More probative, and we believe determinative of this issue, is the holding of the arbitrator himself when he states, "It should be pointed out, however, that the cease and desist order is final and binding on the Unions for the duration of the Contract." It becomes obvious from this quotation that the award was only for the duration of the 1964-68 contract. We submit, therefore, regardless of what the law might be insofar as the life of an award past the life of a contract, the award here clearly and unequivocally states that it is to die with the 1964-68 contract. We therefore submit under these circumstances that the court below was eminently correct when it said the matter had been mooted.

2. THE DECISION BELOW ACKNOWLEDGES THAT THIS MATTER IS MOOT BECAUSE IT DOES NOT INVOLVE REAL AND SUBSTANTIAL RIGHTS OF THE PARTIES.

This is another instance where plaintiffs are reaching for the bottom of the barrel in order to continue an untenable situation of requesting the courts to maintain absolute supervision over contracts on the New Orleans water front. This case involves a situation that has long been terminated by the ending of a contract and the signing of two new contracts. To grant the request of plaintiff would be the enforcement of a contract no longer in existence. The effect would be to render the two subsequent contracts null and void and would be a vain and useless endeavor to require the enforcement of a contract no longer in existence.

The petitioner, by filing the September 3, 1970 complaint, was acknowledging that the instant case no longer had any vitality nor did it involve any real and substantial rights of the parties. Petitioner was aware that the instant case was pending before the district judge. Rather then going by motion on the alleged work stoppages to the district judge in the instant case, it chose to file a complaint seeking relief from the alleged work stoppages. This act by petitioner then effectively transferred its attempt to receive injunctive relief for the alleged work stoppages from the district judge below to another section of the same court, hence a different judge. It can be noted here that in the case bearing the number CA No. 70-2554, New Orleans Steamship Association has not diligently pursued its alleged rights. No appeal was taken and no other matter has been filed by petitioner before that particular district judge,

even though the district judge retained jurisdiction.

The cases cited by plaintiff are not in point and have no bearing on this case. For example, in U.S. v. W. T. Grant Co. 345 U.S. 629, the court acted on the Clayton Act which was an act still in existence. Here the contract sued upon is still in existence. The court did say on page 362, "For to say that the case has become moot means that the defendant is entitled to a dismissal as a matter of right..." However, in the next sentence the court said, "The courts have rightfully refused to grant defendants such a powerful weapon against public law enforcement." (Underscoring ours).

CONCLUSION

It is respectfully submitted that for the reasons cited the writ of certiorari should not be issued to review the judgment and opinion of the Fifth Circuit, nor should the writ be granted on the fact of the papers. We further submit that the lower court's judgments should be left untouched.

Respectfully submitted,

Alvin J. Liska
Victor H. Hess, Jr.

By: _____
7952 Chef Menteur Highway
New Orleans, Louisiana 70126

October 16, 1973

CERTIFICATE

I hereby certify that on this 16th day of October, 1973 three copies of the Brief in Opposition to the Petition for Writ of Certiorari were mailed, postage prepaid to Andrew P. Carter, 1424 Whitney Building, New Orleans, Louisiana 70130.

APPENDIX A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

NEW ORLEANS STEAMSHIP ASSOCIATION, a Corporation	
VS.	NO. 70-2554
GENERAL LONGSHORE WORKERS, I.L.A. LOCAL UNION #1418, an Unincorporated Association, and	SECTION 1(G)
GENERAL LONGSHORE WORKERS, I.L.A. LOCAL UNION #1419, an Unincorporated Association, AFL-CIO	

Excerpts of testimony recorded in the above entitled matter held in the Court Room, 400 Royal Street, New Orleans, Louisiana 70130, on Friday, September 18, 1970, the HONORABLE JAMES A. COMISKEY, Judge Presiding.

APPEARANCES:

Messrs. MONROE & LEMANN,
(By: EUGENE G. TAGGART, ESQ.; and
ROBERT BURNS, ESQ.)
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7952 Chef Menteur Highway,
New Orleans, Louisiana 70126,
Attorney for Local Union 1419.

REPORTED BY:

THOMAS H. CONRAD,
OFFICIAL COURT REPORTER.

- - - - -

BY THE COURT:

Well, here is my view on it, gentlemen:

Number one, I think that I will have to agree with what Mr. Taggart just said, that the intent and motive and purpose behind the deep sea agreement was to pormote labor harmony between the parties, the steamship companies and the longshoremen, but in an effort to have this harmony negotiated outside of the Court Room where frequently it can be worked out better because it's not as -- it's subject to more flexibility outside of the Court Room. I've got to assume that the parties to the deep sea agreement, in good faith, inserted Paragraph XVII, Roman Numeral XVII of the deep sea agreement with the intent that it would play a real important part in maintaining this peace and concord between the parties to the agreement.

I want this to be considered findings of

facts and conclusions of law. Now, as I read it, I am convinced that there are two apparently satisfactory methods of arbitration to resolve disputes in lieu of coming into the Court Room. One is the Section 17 (a), (b) and (c), steps 1, 2 and 3. But, then, there is the expedited arbitration procedure of Section D or, Paragraph D. It's admitted by all parties for all practical purposes that there has been no formalized attempt by plaintiff in this case to invoke arbitration procedure of either the second paragraph or, the D paragraph, (a), (b), (c), steps 1, 2, 3. There may have been, it might have gotten through step 1 in some cases, but not in all cases. I'm convinced from the evidence presented that the dispute with regard to the work stoppages and there are 12, does represent a dispute which is proper arbitrable under this deep sea agreement.

Now, whether or not, pending the arbitration, the plaintiff should be entitled to injunction against work stoppages, I would have to agree that the Boys Markets case had made a real dent in the jurisprudence, it overruled Sinclair. However, I will have to admit that the Boys Markets envisioned a situation where there was a particular violation of the contract which is not present in this case where the violation involved a strike and picketing, where there was a work stoppage, not a threat of one, but there was an existing viable actual work stoppage.

Now, the work stoppages complained of by the plaintiff here occurred over a period of 15 months. During the 15 months there were 12 work stoppages, and that the 12 work stoppages totaled a total of about 22 hours. I would say that each averaged about one hour and 40 minutes. If you really want to just

carry it down to percentages, I worked it out, out of curiosity, it comes out, it looks like of the available working time during the last 15 months, assuming a 40 hour week, that represents eight one-thousandths of one per cent of the work time that was allocable to the Port of New Orleans. Now, of course, you can take statistics and run this thing both ways. But, using that, I find a minimal work stoppage. I find none presently in existence. I find no proof by the plaintiff that there is any proof of a present real threat of a work stoppage about to occur in September, 1970, which is the date on which we are trying this case.

The irreparable injury aspect, it just falls short of what I consider irreparable injury. Furthermore, I think the Court is entitled to the benefit of the study and consideration of an arbitrator who will have made detailed findings of facts and conclusions of law and who, presumably, would have fashioned a remedy which is realistic, which all the parties can live with and function with and such a remedy, I am convinced, can be more flexible than a remedy that the Court can order.

Accordingly, my position is at this time like in the LASH Cargo case just like in the other two cases, I think the plaintiff ought to avail themselves to procedures of Paragraph XVII, whether they proceed with 1, 2, 3 arbitration, or whether they go right to the Paragraph D arbitration. I think if the union does not show up to arbitrate, that is no bar to its effect, it can still be held in their abstentia. It can be held in effect of a default judgment. No doubt, it would expedite the hearing if that be the case, or expedite the arbitration. And thereafter,

an award can be made which, as I read the LASH Cargo case, which I handled, now becomes very enforceable by the District Court. It's not a question of jurisdiction, in fact, I find in this case that the disputes here are within the jurisdiction of the deep sea agreement and would be within the jurisdiction of an arbitrator were he to conduct such arbitration.

At this time, therefore, I am going to grant the defendants' motion and I am going to deny the plaintiff's request for a TRO or, a Temporary Restraining Order, preliminary and permanent injunction.

However, I am going to retain jurisdiction in this case and reserve to the plaintiff the right to seek Temporary Restraining Order relief in event during the arbitration this matter would erupt into some further or some bigger problem, some bigger labor problem.

Therefore, I'm going to grant the motion, but retain jurisdiction and order that the the parties abide by the deep sea agreement and engage in arbitration in accordance with the provision of Paragraph XVII.

MR. TAGGART:

Thank you, your Honor.

THE COURT:

In the meantime, then, the Court will stand at recess.

- - - - -

CERTIFICATE

I HEREBY CERTIFY that the preceding Excerpts of testimony given in the above entitled and numbered cause on Friday, September 18, 1970, before the HONORABLE JAMES A. COMISKEY, Judge Presiding, were reported by me in Shorthand (stenograph) and transcribed under my personal direction and supervision, and is a true and correct transcript to the best of my ability and understanding.

s/Thomas H. Conrad
THOMAS H. CONRAD,
OFFICIAL COURT REPORTER.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

NEW ORLEANS STEAMSHIP ASSOCIATION, a Corporation	)	
versus	)	NO. 70-2554
GENERAL LONGSHORE WORKERS, I.L.A. LOCAL UNION #1418, an Unincorporated Association, and GENERAL LONGSHORE WORKERS, I.L.A. LOCAL UNION #1419, an Unincorporated Association, AFL-CIO	)	CIVIL ACTION SECTION G

JUDGMENT

The Court having on September 18, 1971, denied plaintiff's request for a temporary restraining order for reasons dictated in the record, accordingly;

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendants, General Longshore Workers, I.L.A. Local Union #1418, an Unincorporated Association, and General Longshore Workers, I.L.A. Local Union #1419, an Unincorporated Association, AFL-CIO, and against plaintiff, New Orleans Steamship Association, a Corporation, dismissing said plaintiff's suit at their costs, with the Court retaining jurisdiction.

New Orleans, Louisiana, this 14th day of October, 1971.

s/Benjamin W. Reisch
BENJAMIN W. REISCH, Clerk

APPROVED AS TO FORM:

s/James A. Comiskey
UNITED STATES DISTRICT JUDGE

- - - - -

Eugene C. Taggart, Esq.

Victor H. Hess, Jr., Esq.

Alvin J. Liska, Esq.

Oct 14, 1971